



## The Pittsburg & Midway Coal Mining Co.

A Chevron Company

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MSHA/OSRV

**Mark A. Premo**

Vice President – Operations

October 23, 2006

Mine Safety & Health Administration  
Office of Standards, Regulations and Variances  
1100 Wilson Boulevard, Room 2350  
Arlington, Virginia 22209-3939  
Attn. Patricia Silvey, Acting Director

Re: 1219-AB51; Criteria and Procedures for  
Proposed Assessment of Civil Penalties

Dear Ms. Silvey:

The Pittsburg & Midway Coal Mining Co. (P&M) appreciates this opportunity to submit comments on the proposed revisions to the civil penalty regulations under 30 CFR Part 100. P&M operates three coal mines, an underground North River Mine in Alabama and two surface mines, one in Wyoming and one in New Mexico. P&M is committed to maintaining a safe working environment for all of its employees and contractors. As discussed below, P&M is making great efforts to further protect the health and safety of its miners.

P&M supports MSHA's efforts to improve the health and safety of the nation's miners. However, P&M believes that MSHA's premises that an increase in penalties across the industry will significantly thereby increase compliance and enhance safety are without substantial basis and will not lead to the intended result - greater safety.

MSHA states in the Summary (71 FR 53054) that the "changes are intended to induce greater mine operator compliance with the Mine Act and MSHA's safety and health standards, thereby improving safety and health for miners." MSHA assumes later that a 10% increase in penalty for a violation will result in a 3% decrease in the probability of its occurrence. (71 FR 53067) MSHA gives no basis for either of these assumptions. MSHA assumes that:

- Operators fail to comply with mandatory standards for simple economic reasons - that it is cheaper to pay penalties than to comply. (71 FR 53057)
- Higher penalties will reduce fatalities and improve miner health and safety. (71 FR 53056)

P&M strongly believes that compliance with mandatory standards is an essential first step in protecting the health and safety of miners. However, simply complying with the standards is not enough and many operators like P&M are proactive in protecting miner health and safety and go well beyond compliance in their efforts to prevent injuries and illnesses. Furthermore, while

AB51-COMM-38

increased penalties may result in some reduction in citations, the reduction will likely be only marginal. This is based on the facts that:

- Most operators are already working diligently to comply with all of the mandatory standards, and
- Many standards are subjective in nature, such as the prohibitions on allowing accumulations of combustible materials. MSHA inspectors can always write citations for accumulations in coal mines by unreasonably applying that standard.

P&M has made significant efforts in 2005 and 2006 at its North River Mine to focus on becoming Injury and Incident Free (IIF) in order to improve health and safety, and to attain zero injuries. P&M's IIF programs focus on the human factor and creating a true safety culture in every employee's heart and mind. The programs include Behavior Based Safety (BBS), Stop Work Authority (SWA), and Self-Performed Safety Assessments. While the programs focus on the human factors and the safe work practices in order to attain zero injuries, a side benefit is increased compliance.

As an example of this cultural change, the employees of our North River Mine have performed over 4,500 safety observations to date. This is only the beginning of the journey to become IIF. The employees will continue with these observations, conduct additional feedback training, implement a process to encourage more near miss reporting, continue to conduct more focused safety training for higher incident employees, implement a safe work practices process as well as an incident investigation process, continue the development of JSA and JTA's and benchmark best practices. Each employee has also received SWA training, which imparts a right and responsibility to every employee to stop all work that is unsafe for any reason without repercussions from management.

In addition to the money P&M invested in 2006 to meet the new regulatory requirements of the Emergency Temporary Standard and MINER Act, P&M has invested nearly \$1 million in its IIF and BBS programs since their inception in 2005. These costs include dedicating over 20,000 employee hours in 2005 and 2006 for the development and implementation of these programs. In 2005, North River Mine's LTA rate was 6.43. As of September 30, 2006 the LTA rate is 1.47. We believe that our investment in our IIF and BBS programs are critical contributors to our reduction in injuries, as shown by P&M's greatly improved LTA rate.

P&M recognizes that there may be some operators who are indifferent to the health and safety of their miners. However, P&M suggests that these operators are not in the majority and that MSHA already has adequate enforcement tools to penalize their non-compliance. P&M believes that significantly increased penalties levied broadly across the industry will focus companies on penalties rather than on improving the health and safety of their employees.

### Specific Comments

#### Size of Operations - Section 103 (b)

P&M believes that increasing the amount of the penalty based on the size of the mine is inappropriate because larger mines are more likely to receive more citations simply because of their size. There are simply more areas for accumulations to occur and more equipment to have some defects. For instance, at P&M's North River Mine there are over twelve miles of conveyor and 20,000 rollers. A single coal spill unnoticed or a single bad roller could result in a citation.

#### History of Previous Violations – Section 100.3(c).

P&M agrees that the history of previous violations is relevant and agrees with a separate component for repeat violations of the same standard. However, the proposed regulations would result in unreasonable penalties due to the fact that some standards are subjective in nature, broad in coverage, and therefore very frequently cited, such as those addressing accumulations or maintenance of equipment. For example, 13% of all citations issued at underground coal mines in recent years were written under Section 75.400 for accumulations of combustible materials. While we take the accumulation of these materials extremely seriously, many of these accumulations citations are for conditions that are insignificant and pose no real threat to the safety of our employees. Over a 15-month rolling period, every large underground coal mine would most likely have a history of at least 20 citations under this standard and therefore reach the maximum number of points under the new regulations.

P&M agrees with MSHA's suggestion that only S&S citations should be considered for the increased penalties for repeat violations.. Even then consideration should be given for the efforts the operator had made to comply. One possible approach would be to consider only citations with high negligence (or moderate negligence, if inspectors used that designation more judiciously, as we discuss below).

#### Negligence – Section 103(d)

P&M agrees that penalties should increase with higher degrees of negligence. P&M's concern is that inspectors designate most citations with at least moderate negligence. Thus penalties will be raised without significant negligence on the part of the operator in the majority of cases. If inspectors recognized that a large number of violations are due to low or even no negligence, the higher penalties for moderate negligence would be appropriate. Furthermore, inspectors should give consideration to the overall efforts an operator is making towards both safety and compliance, not just whether the operator was negligent for an individual violation.

#### Single Penalty Elimination

Deletion of the single penalty will greatly increase the total penalties for operators despite the fact that, as MSHA notes, the non-S&S violations are not likely to result in injuries. P&M has calculated that a 104(a) non-S&S citation for accumulations at its North River Mine, assuming

moderate negligence, one person affected, lost work days, a VPID of 1.0, but a history of more than 20 citations under §75.400 for the prior 15 months, would be \$1,026, an increase of 1,700%.

### Costs

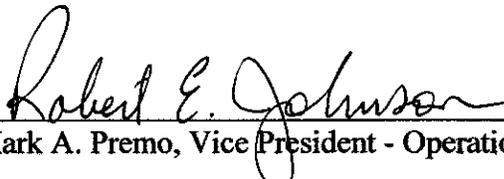
MSHA tables under "Costs" show that the average penalty for coal mines with 20-500 employees was \$254 in 2005 (Table IV-3) and is projected to be \$866 under the proposed revisions (Table IV-5), an increase of 241% (Table IV-6). P&M performed an analysis of the 104(a) citations written under §75.400 at its North River Mine in 2005 and found an average penalty of \$60 for the non-S&S citations and \$550 for the S&S citations. Under the proposed penalty provisions the average penalty for 104(a) non-S&S citations written under §75.400 would likely be \$1,026 (a 1,700% increase) and for 104(a) S&S would be \$5,081 (a 900% increase). P&M also calculated that the penalties under one randomly selected assessment for its North River Mine in 2006 would have been 660% higher under the proposed regulations. Similar calculations for the surface mines showed increases of 300% and 350%.

### Conclusion

We appreciate the opportunity to submit these comments. While we support MSHA's efforts to continually improve the health and safety of the nation's miners, we believe that this overly broad increase in penalties is without any sound basis. We therefore submit that the proposed revisions are arbitrary and capricious and should not be adopted as currently drafted.

Respectfully submitted,

The Pittsburg & Midway Coal Mining Co.

 10-23-06  
Mark A. Premo, Vice President - Operations

for  
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